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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/843,882	04/30/2001	Guillermo A. Alvarez	10010559-1	1174

7590 03/22/2005

HEWLETT-PACKARD COMPANY
Intellectual Property Administration
P.O. Box 272400
Fort Collins, CO 80527-2400

EXAMINER

YIGDALL, MICHAEL J

ART UNIT	PAPER NUMBER
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2192

DATE MAILED: 03/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/843,882

Applicant(s)

ALVAREZ ET AL.

Examiner

Michael J. Yigdoll

Art Unit

2122

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 3/2/2005 (certified) FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The reply was filed after the date of filing a Notice of Appeal, but prior to the date of filing an appeal brief. The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the ~~proposed amendment(s)~~ *Request for Reconsideration* a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the ~~new or amended~~ claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 1-23

Claim(s) withdrawn from consideration: _____

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____

13. ☐ Other: _____

Continuation of 11. does NOT place the application in condition for allowance because:


Applicant contends that Tachikawa fails to teach the calculation of a change in the rate of said moving based on the performance of at least one application (Applicant's remarks, page 10, last paragraph), and that Tachikawa fails to disclose that the rate of moving the data is modified or adjusted as set forth in claims 1, 11, 16 and 23 (Applicant's remarks, page 11, first paragraph). Similarly, Applicant contends that Sakaki does not calculate a change in the rate based on the performance of at least one application (Applicant's remarks, page 11, second paragraph).

However, as presented in the final Office action, Tachikawa discloses monitoring the load or performance of a system while moving data (see, for example, column 13, lines 6-15). The monitored load or performance is the load or performance of at least one executing application, such as, in one case, an application that records and reproduces image data (see, for example, column 10, lines 51-63). Tachikawa further discloses modifying or adjusting the rate of moving based on the monitored load or performance (see, for example, column 12, lines 7-13 and 34-41). In other words, Tachikawa teaches modifying or adjusting the rate of moving based on the performance of at least one application. Applicant suggests that Tachikawa discloses a data relocation method in which the data is moved when the load condition is low and not moved when the load condition is high (Applicant's remarks, page 10, second paragraph). Therefore, even by Applicant's characterization, Tachikawa discloses modifying or adjusting the rate of moving based on the load.

Tachikawa does not expressly disclose calculating a change in the rate of moving, as acknowledged in the final Office action, and thus does not expressly disclose modifying or adjusting the rate of moving based on the calculated change. However, Sakaki discloses calculating changes in performance and subsequently modifying or adjusting the data migration speed based on the calculations (see, for example, column 8, lines 17-36). In other words, Sakaki teaches calculating a change in the rate of moving based on performance and modifying or adjusting the rate of moving based on the calculated change. Sakaki further discloses that the data migration method provides improved performance and improved access to data volumes (see, for example, column 2, lines 55-59).

In summary, Tachikawa teaches modifying or adjusting the rate of moving based on the performance of at least one application. Sakaki teaches calculating a change in the rate of moving based on performance and modifying or adjusting the rate of moving based on the calculated change. It would have been obvious to one of ordinary skill in the art at the time the invention was made to supplement the method of Tachikawa so as to calculate a change in the rate of moving, such as taught by Sakaki, and modify or adjust the rate of moving based on the calculated change based on the performance of at least one application. The combination would have been obvious because one of ordinary skill in the art would have been motivated to improve the performance of the moving and improve access to the data.

MY


TUAN DAM
SUPERVISORY PATENT EXAMINER